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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 MICHELE OGLINA, DERIVATIVELY  
14 AND ON BEHALF OF AMPIO  
15 PHARMACEUTICALS, INC.,

16 Plaintiff,

17 vs.

18 MICHAEL MACALUSO, DAVID BAR-  
19 OR, PHILIP H. COELHO, RICHARD B.  
20 GILES, DAVID R. STEVENS, VAUGHAN  
21 L. CLIFT, MARK D. MCGREGOR, AND  
22 GREGORY A. GOULD,

23 Defendants,

24 And

25 AMPIO PHARMACEUTICALS, INC.,

26 Nominal Defendant.  
27  
28

CASE No.:

VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT  
FOR:

(1) BREACH OF FIDUCIARY  
DUTY;  
(2) CORPORATE WASTE;  
(3) GROSS MISMANAGEMENT;  
AND  
(4) UNJUST ENRICHMENT

**JURY TRIAL DEMANDED**

## **INTRODUCTION**

Plaintiff Michele Oglina ("Plaintiff"), by her undersigned attorneys, derivatively and on behalf of Nominal Defendant Ampio Pharmaceuticals, Inc. ("Ampio," or the "Company"), files this Verified Shareholder Derivative Complaint against Individual Defendants Michael Macaluso, David Bar-Or, Philip H. Coelho, Richard B. Giles, David R. Stevens, Vaughan L. Clift, Mark D. McGregor, and Gregory A. Gould (collectively, the "Individual Defendants") for breaches of their fiduciary duties as directors and/or officers of Ampio, gross mismanagement, abuse of control, and unjust enrichment for her complaint against Individual Defendants, alleges the following based upon personal knowledge as to herself and her own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through her attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Ampio, news reports, securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

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**NATURE OF THE ACTION**

1  
2 1. This is a shareholder derivative action which seeks to remedy  
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4 wrongdoing committed by Ampio's directors and officers.

5 2. Ampio is a biopharmaceutical company that is focused primarily on  
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7 the development of therapies to treat prevalent inflammatory conditions in the U.S.  
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9 for which there are limited treatment options. Ampio's two lead product candidates  
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11 in development are Ampion for osteoarthritis of the knee and Optina for diabetic  
12  
13 macular edema.

14 3. On January 13, 2014, the Company issued a press release announcing  
15  
16 that the 500 patient Phase III pivotal trial of Ampion (the "STEP Study") for the  
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18 treatment for osteoarthritis of-the-knee ("OAK") has received Institutional Review  
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20 Board ("IRB") approval and FDA IND clearance, and that patients enrollment and  
21  
22 treatments have commenced. An IND application must become effective before  
23  
24 human clinical trials may begin in the U.S.

25 4. The STEP Study lacked autonomy.

26 5. The trial drug supply for the STEP Study was shipped to clinical sites  
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28 at lower temperatures than permitted by the drug specifications.

29 6. Defendants made materially false and misleading statements regarding  
30  
31 the Company's business, operations, and prospects. Specifically, Defendants made  
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33 false and/or misleading statements and/or failed to disclose that: (1) the clinical  
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35 research organization conducting the STEP Study lacked autonomy; (2) the trial

1 drug supply for the STEP Study was shipped to clinical sites at lower temperatures  
2 than permitted by the drug specifications; and (3) as a result of the foregoing, the  
3 Company's public statements were materially false and misleading at all relevant  
4 times. Defendants failed to correct these materially false and misleading  
5 statements.  
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8 7. Defendants breached their fiduciary duties by failing to ensure that the  
9 clinical research organization conducting the STEP Study was autonomous.

10 8. Defendants breached their fiduciary duties by failing to ensure that the  
11 trial drug supply for the STEP Study was not shipped to clinical sites at lower  
12 temperatures than permitted by the drug specifications.  
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14 9. Defendants breached their fiduciary duties by causing the Company to  
15 make false and misleading statements and/or omissions of material fact that: (1) the  
16 clinical research organization conducting the STEP Study lacked autonomy; and (2)  
17 the trial drug supply for the STEP Study was shipped to clinical sites at lower  
18 temperatures than permitted by the drug specifications. Defendants breached their  
19 fiduciary duties by causing the Company to fail to correct these false and  
20 misleading statements and/or omissions of material fact.  
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23  
24 10. In light of Defendants' conduct, which has subjected the Company and  
25 Defendants Macaluso, McGregor, and Gould to being named as defendants in two  
26 federal securities fraud class action lawsuits filed in this Court, a majority of the  
27 Board cannot consider a demand to commence litigation against themselves on  
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1 behalf of the Company with the requisite level of disinterestedness and  
2 independence.

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4 11. The Company has been substantially damaged as a result of the  
5 Individual Defendants' knowing breaches of fiduciary duty and other misconduct.

6  
7 **JURISDICTION AND VENUE**

8 12. Diversity jurisdiction is conferred by 28 U.S.C. § 1332. Plaintiff and  
9 Individual Defendants are citizens of different states and the amount in controversy  
10 exceeds the sum or value of \$75,000, exclusive of interest and costs.

11  
12 13. The Court has personal jurisdiction over each of the Defendants  
13 because each Defendant is either a corporation conducting business and  
14 maintaining operations in this District, or is an individual who is a citizen of  
15 California or who has minimum contacts with this District to justify the exercise of  
16 jurisdiction over them.

17  
18 14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and  
19 1401 because a substantial portion of the transactions and wrongs complained of  
20 herein occurred in this District, and the Defendants have received substantial  
21 compensation in this district by engaging in numerous activities that had an effect  
22 in this District.

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**PARTIES**

15. Plaintiff is a current shareholder of Ampio. Plaintiff has been a shareholder of Ampio common stock at all relevant times, and has continuously held Ampio common stock at all relevant times. Plaintiff is a citizen of Italy.

16. Defendant Ampio is a biopharmaceutical research and development company. Ampio is a Delaware Corporation headquartered in Englewood, Colorado. The Company's stock has been listed on the NYSE Market ("NYSE") under ticker "AMPE."

17. Defendant Michael Macaluso ("Macaluso") has been the Company's Chief Executive Officer since January 9, 2012, and one of its Directors since March 2010. According to the Company's Schedule 14A filed with the SEC on August 15, 2014 (the "2014 Proxy Statement"), Macaluso "founded Life Sciences and has been a member of the board of directors of Life Sciences, our predecessor, since its inception. Mr. Macaluso has also been a member of our Board of Directors since the merger with Chay Enterprises in March 2010 and our Chief Executive Officer since January 9, 2012. Mr. Macaluso was appointed president of Fibrocell Science, Inc., formerly known as Isolagen, Inc., and served in that position from June 2001 to August 2001, when he was appointed chief executive officer. In June 2003, Mr. Macaluso was re-appointed as president of Isolagen and served as both chief executive officer and president until September 2004. Mr. Macaluso also served on the board of directors of Isolagen from June 2001 until April 2005. From October

1 1998 until June 2001, Mr. Macaluso was the owner of Page International  
2 Communications, a manufacturing business. Mr. Macaluso was a founder and  
3 principal of International Printing and Publishing, a position Mr. Macaluso held  
4 from 1989 until 1997, when he sold that business to a private equity firm. Mr.  
5 Macaluso's experience in executive management and marketing within the  
6 pharmaceutical industry, monetizing company opportunities, and corporate finance  
7 led to the conclusion of our Board of Directors that he should serve as a director of  
8 our company in light of our business and structure." Upon information and belief,  
9 Macaluso is a citizen of Colorado.

13 18. Defendant David Bar-Or ("Bar-Or") has been the Company's Chief  
14 Scientific Officer since March 2010. Bar-Or was the Company's Chairman of the  
15 Board from March 2010 until May 2010. At all relevant times Bar-Or has been a  
16 Company Director. According to the Company's 2014 Proxy Statement, "[f]rom  
17 April 2009 until March 2010, he served as chairman of the board and chief  
18 scientific officer of Life Sciences. Dr. Bar-Or is currently the director of Trauma  
19 Research at Swedish Medical Center, Englewood, Colorado, and St. Anthony's  
20 Hospital, Lakewood, Colorado. Dr. Bar-Or is the founder of Ampio  
21 Pharmaceuticals Inc. Dr. Bar-Or is principally responsible for all patented and  
22 proprietary technologies acquired by us from BioSciences in April 2009 and for all  
23 patents issued and applied for since then, having been issued over 270 patents and  
24 having filed or co-filed almost 120 patent applications as of the fiscal year 2013.

1 Dr. Bar-Or has authored or co-authored over 105 peer-reviewed journal articles and  
2 several book chapters. He is the recipient of the Gustav Levi Award from the  
3 Mount Sinai Hospital, New York, New York, the Kornfeld Award for an  
4 outstanding MD Thesis, the Outstanding Resident Research Award from the  
5 Denver General Hospital, and the Outstanding Clinician Award for the Denver  
6 General Medical Emergency Resident Program. Dr. Bar-Or received his medical  
7 degree from The Hebrew University, Hadassah Medical School, Jerusalem, Israel,  
8 following which he completed a biochemistry fellowship at Hadassah Hospital  
9 under Professor Alisa Gutman and undertook post-graduate work at Denver Health  
10 Medical Center, specializing in emergency medicine, a discipline in which he is  
11 board certified. He completed the first research fellowship in Emergency Medicine  
12 at Denver Health Medical Center under the direction of Prof Peter Rosen. Among  
13 other experience, qualifications, attributes and skills, Dr. Bar-Or's medical training,  
14 extensive involvement and inventions in researching and developing our product  
15 candidates, and leadership role in his hospital affiliations led to the conclusion of  
16 our Board of Directors that he should serve as a director of our company in light of  
17 our business and structure." Upon information and belief, Bar-Or is a citizen of  
18 Colorado.

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25 19. Defendant Vaughan L. Clift ("Clift") has been the Company's Chief  
26 Regulatory Affairs Officer since March 2010. According to the Company's 2014  
27 Proxy Statement, Clift "was employed by Life Sciences from May 2009 until  
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1 March 2010. From 2005 to 2009, Dr. Clift was the chief executive officer of  
2 Detectachem LLC, a Houston, Texas-based manufacturer of a hand-held explosive  
3 and narcotics detection device. Dr. Clift was the Vice President of Operations,  
4 including all FDA regulatory matters, for Isolagen from 2002 until 2005. From  
5 January 2001 to May 2002, Dr. Clift researched home oxygen therapy systems  
6 while developing an oxygen system for NASA. From July 1997 to January 2001, he  
7 was Chief Scientist of DBCD, Inc., a medical device company that manufactured a  
8 range of blood diagnostic products for the human and veterinary markets. From  
9 May 1992 to June 1997, Dr. Clift was Chief Scientist for the Science Payload  
10 Development, Engineering and Operations project at Lockheed Martin's Human  
11 Spaceflight Division. Dr. Clift has received a number of international and federal  
12 awards and was nominated as one of NASA's top ten inventors in 1995." Upon  
13 information and belief, Clift is a citizen of Colorado.

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18 20. Defendant Gregory Gould ("Gould") has been the Company's Chief  
19 Financial Officer since June 10, 2010. According to the Company's 2014 Proxy  
20 Statement, "Mr. Gould was most recently a financial and operational consultant to  
21 the biotech industry through his company Gould, LLC, from April 2012 through  
22 June 2014. Prior to working as a consultant, Mr. Gould was the chief financial  
23 officer, secretary and treasurer of SeraCare Life Sciences, Inc., a biological  
24 products manufacturer and service provider for the diagnostic, therapeutic and drug  
25 discovery markets, from November 2006 through April 2012. During the period  
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1 from July 2011 until April 2012, he also served as the interim president and chief  
2 executive officer of SeraCare Life Sciences, Inc. From 2004 to 2005, Mr. Gould  
3 served as chief financial officer, treasurer and secretary of Atrix Laboratories, Inc.,  
4 a specialty pharmaceutical company focused on advanced drug delivery. Mr. Gould  
5 began his career at Arthur Andersen, LLP. He currently serves on the board of  
6 directors of CytoDyn, Inc., a publicly traded drug development company, and is the  
7 Chief Financial Officer, Treasurer and Secretary of Luoxis Diagnostics, Inc. and  
8 Vyrix Pharmaceuticals, Inc. Mr. Gould holds a BS in business administration from  
9 the University of Colorado and is a certified public accountant." Upon information  
10 and belief, Gould is a citizen of Colorado.

14 21. Defendant Mark D. McGregor ("McGregor") has been the Company's  
15 Chief Financial Officer from April 2011 until June 10, 2014. According to the  
16 Company's Schedule 14A filed with the SEC on November 1, 2013 (the "2013  
17 Proxy Statement"), " Mr. McGregor is a certified public accountant with over 30  
18 years' financial experience in a variety of industries. Mr. McGregor served in  
19 various financial capacities with Louisville, Colorado-based Storage Technology  
20 Corporation, or StorageTek, from February 1985 until October 2005. During this  
21 period, Mr. McGregor held three positions with StorageTek, including director of  
22 revenue management (1985-1987), assistant corporate controller (1987-1993), and  
23 vice president, corporate treasurer and corporate development (1993-2005). After  
24 leaving StorageTek, Mr. McGregor served as the chief financial officer of  
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1 Integrated Management Information, Inc., or IMI, from February 2006 to  
2 November 2007. IMI is a publicly-traded provider of identification, verification and  
3 communications solutions for the agriculture, livestock, and food industries. He  
4 began his career with Price Waterhouse, now PricewaterhouseCoopers LLP, where  
5 he spent 13 years with the Audit Department. Mr. McGregor holds a BBA degree in  
6 accounting from Texas A&M University and served in the United States Army  
7 from 1964 to 1966, where he attained the rank of First Lieutenant." Upon  
8 information and belief, McGregor is a citizen of Colorado.

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12 22. Defendant Richard B. Giles ("Giles") has been a member of the  
13 Company's Board of Directors since August 2010. Giles is a member of the Audit  
14 Committee, the Nomination and Governance Committee, and the Compensation  
15 Committee. According to the Company's 2014 Proxy Statement, "Mr. Giles is the  
16 Chief Financial Officer of Ludvik Electric Co., an electrical contractor  
17 headquartered in Lakewood, Colorado, a position he has held since 1985. Ludvik  
18 Electric is a private electrical contractor with 2013 revenues of over \$89 million  
19 that has completed electrical contracting projects throughout the United States,  
20 South Africa and Germany. As CFO and Treasurer of Ludvik Electric, Mr. Giles  
21 oversees accounting, risk management, financial planning and analysis, financial  
22 reporting, regulatory compliance, and tax-related accounting functions. He serves  
23 also as the trustee of Ludvik Electric Co.'s 401(k) plan. Prior to joining Ludvik  
24 Electric, Mr. Giles was for three years an audit partner with Higgins Meritt &  
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1 Company, then a Denver, Colorado CPA firm, and during the preceding nine years  
2 he was an audit manager and a member of the audit staff of Price Waterhouse, one  
3 of the legacy firms which now comprises PricewaterhouseCoopers. While with  
4 Price Waterhouse, Mr. Giles participated in a number of public company audits,  
5 including one for a leading computer manufacturer. Mr. Giles received a B.S.  
6 degree in accounting from the University of Northern Colorado. He is a member of  
7 the American Institute of Certified Public Accountants, Colorado Society of  
8 Certified Public Accountants and the Construction Financial Management  
9 Association. Mr. Giles' experience in executive financial management, accounting  
10 and financial reporting, and corporate accounting and controls led to the conclusion  
11 of our Board of Directors that he should serve as a director of our company in light  
12 of our business and structure." Upon information and belief, Giles is a citizen of  
13 Colorado.

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18 23. Defendant Philip H. Coelho ("Coelho") has been a member of the  
19 Company's Board of Directors since April 2010. Coelho is a member of the Audit  
20 Committee, the Nomination and Governance Committee, and the Compensation  
21 Committee. According to the Company's 2014 Proxy Statement, "Mr. Coelho is the  
22 Co-Founder and CTO of SynGen Inc., a firm inventing and commercializing  
23 products that harvest stem and progenitor cells derived from a donor or the patient's  
24 own body to treat human disease. Prior to founding SynGen Inc. in October 2009,  
25 Mr. Coelho was the President and CEO of PHC Medical, Inc., a consulting firm,  
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1 from August 2008 through October 2009. From August 2007 through May 2008,  
2 Mr. Coelho served as the Chief Technology Architect of ThermoGenesis Corp., a  
3 medical products company he founded in 1986 that focused on the regenerative  
4 medicine market. From 1989 through July 2007, he was Chairman and Chief  
5 Executive Officer of ThermoGenesis Corp. Mr. Coelho served as Vice President of  
6 Research & Development of ThermoGenesis from 1986 through 1989. Mr. Coelho  
7 has been in the senior management of high technology consumer electronic or  
8 medical device companies for over 30 years. He was President of Castleton Inc.  
9 from 1982 to 1986, and President of ESS Inc. from 1971 to 1982. Mr. Coelho also  
10 serves as a member of the board of directors of Nasdaq-listed company, Catalyst  
11 Pharmaceuticals Partners, Inc. (CPRX) (since October 2002), and served as a  
12 member of the Board of Directors of NASDAQ-listed Mediware Information  
13 Systems, Inc. (MEDW) (from December 2001 until July 2006, and commencing  
14 again in May 2008 until it was sold in December 2012). Mr. Coelho received a B.S.  
15 degree in thermodynamic and mechanical engineering from the University of  
16 California, Davis and has been awarded more than 30 U.S. patents in the areas of  
17 cell cryopreservation, cryogenic robotics, cell selection, blood protein harvesting  
18 and surgical homeostasis. Mr. Coelho's long tenure as a chief executive officer of a  
19 medical device company, as director of a public pharmaceutical company, prior and  
20 current public company board experience, and knowledge of corporate finance and  
21 governance as an executive and director, as well as his demonstrated success in  
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1 developing patented technologies, led to the conclusion of our Board of Directors  
2 that he should serve as a director of our company in light of our business and  
3 structure." Upon information and belief, Coelho is a citizen of California.  
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5       24. Defendant David R. Stevens ("Stevens") has been a member of the  
6 Company's Board of Directors since June 2011. Stevens is a member of the Audit  
7 Committee and the Compensation Committee. According to the Company's 2014  
8 Proxy Statement, "Dr. Stevens is currently Executive Chairman of Cedus, Inc., a  
9 privately-held development stage biopharmaceutical company and a board member  
10 of Cetya, Inc., a privately-held development stage pharmaceutical company and of  
11 Micro-Imaging Solutions, LLC, a private medical device company. He has served  
12 on the boards of several other public and private life science companies, including  
13 Poniard Pharmaceuticals, Inc. (2006-2012), Aqua Bounty Technologies, Inc. (2002-  
14 2012), and Smart Drug Systems, Inc. (1999-2006), and was an advisor to Bay City  
15 Capital from 1999-2006. Dr. Stevens was previously President and CEO of  
16 Deprenyl Animal Health, Inc., a public veterinary pharmaceutical company, from  
17 1990 to 1998, and Vice President, Research and Development, of Agrion Corp., a  
18 private biotechnology company, from 1986 to 1988. He began his career in  
19 pharmaceutical research and development at the former Upjohn Company, where  
20 he contributed to the preclinical evaluation of Xanax and Halcion. Dr. Stevens  
21 received B.S. and D.V.M. degrees from Washington State University, and a Ph.D.  
22 in comparative pathology from the University of California, Davis. He is a  
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1 Diplomat of the American College of Veterinary Pathologists. Dr. Stevens has  
2 worked in the pharmaceutical and biotechnology industries since 1978. Dr. Stevens'  
3 experience in executive management in the pharmaceutical industry, and  
4 knowledge of the medical device industry led to the conclusion of our Board of  
5 Directors that he should serve as a director of our company in light of our business  
6 and structure." Upon information and belief, Stevens is a citizen of Colorado.  
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9 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

10 25. By reason of their positions as officers, directors and/or fiduciaries of  
11 Ampio and because of their ability to control the business and corporate affairs of  
12 Ampio, the Individual Defendants owed Ampio and its shareholders fiduciary  
13 obligations of trust, loyalty, good faith, and due care, and were and are required to  
14 use their utmost ability to control and manage Ampio in a fair, just, honest, and  
15 equitable manner. The Individual Defendants were and are required to act in  
16 furtherance of the best interests of Ampio and its shareholders so as to benefit all  
17 shareholders equally.  
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21 26. Each director and officer of the Company owes to Ampio and its  
22 shareholders the fiduciary duty to exercise good faith and diligence in the  
23 administration of the Company and in the use and preservation of its property and  
24 assets and the highest obligations of fair dealing.  
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1           27. The Individual Defendants, because of their positions of control and  
2 authority as directors and/or officers of Ampio, were able to and did, directly and/or  
3 indirectly, exercise control over the wrongful acts complained of herein.  
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5           28. To discharge their duties, the officers and directors of Ampio were  
6 required to exercise reasonable and prudent supervision over the management,  
7 policies, controls, and operations of the Company.  
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9           29. Each Individual Defendant, by virtue of his position as a director  
10 and/or officer, owed to the Company and to its shareholders the highest fiduciary  
11 duties of loyalty, good faith, and the exercise of due care and diligence in the  
12 management and administration of the affairs of the Company, as well as in the use  
13 and preservation of its property and assets. The conduct of the Individual  
14 Defendants complained of herein involves a knowing and culpable violation of their  
15 obligations as directors and officers of Ampio, the absence of good faith on their  
16 part, or a reckless disregard for their duties to the Company and its shareholders  
17 that the Individual Defendants were aware or should have been aware posed a risk  
18 of serious injury to the Company. The conduct of the Individual Defendants has  
19 been ratified by the Individual Defendants who collectively comprised the Ampio's  
20 Board at all relevant times.  
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25           30. As senior executive officers and directors of a publicly-traded  
26 company whose common stock was registered with the SEC pursuant to the  
27 Exchange Act and traded on NYSE, the Individual Defendants had a duty not to  
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1 effect the dissemination of inaccurate and untruthful information with respect to the  
2 Company's financial condition and performance, growth, operations, financial  
3 statements, business, products, management, earnings, and present and future  
4 business prospects, so that the market price of the Company's common stock would  
5 be based upon truthful and accurate information, and had a duty to correct such  
6 dissemination of inaccurate and untruthful information. Accordingly, the  
7 Individual Defendants breached their fiduciary duties by causing or recklessly  
8 permitting violations of the federal securities laws.

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12 31. To discharge their duties, the officers and directors of Ampio were  
13 required to exercise reasonable and prudent supervision over the management,  
14 policies, practices, and internal controls of the Company. By virtue of such duties,  
15 the officers and directors of Ampio were required to, among other things:

17 (a) refrain from acting upon material inside corporate information  
18 to benefit themselves;

20 (b) ensure that the Company complied with its legal obligations and  
21 requirements, including acting only within the scope of its legal authority and  
22 disseminating truthful and accurate statements to the investing public;

24 (c) conduct the affairs of the Company in an efficient, business-like  
25 manner so as to make it possible to provide the highest quality performance of its  
26 business, to avoid wasting the Company's assets, and to maximize the value of the  
27 Company's stock;  
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1 (d) properly and accurately guide investors and analysts as to the  
2 true financial condition of the Company at any given time, including making  
3 accurate statements about the Company's financial results;  
4

5 (e) remain informed as to how Ampio conducted its operations, and,  
6 upon receipt of notice or information of imprudent or unsound conditions or  
7 practices, make reasonable inquiry in connection therewith, and take steps to  
8 correct such conditions or practices and make such disclosures as necessary to  
9 comply with securities laws; and  
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12 (f) ensure that Ampio was operated in a diligent, honest, and  
13 prudent manner in compliance with all applicable laws, rules, and regulations.  
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15 32. Each of the Individual Defendants further owed to Ampio and the  
16 shareholders the duty of loyalty requiring that each favor Ampio's interest and that  
17 of its shareholders over their own while conducting the affairs of the Company and  
18 refrain from using their position, influence or knowledge of the affairs of the  
19 Company to gain personal advantage.  
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21 33. Moreover, the Individual Defendants, as either officer, director, and/or  
22 employee of the Company, were required to comply with the Company Code of  
23 Business Conduct and Ethics ("Code of Ethics"). The Code of Ethics states that it  
24 "covers a wide range of business practices and procedures. It does not cover every  
25 issue that may arise, but it sets out basic principles to guide all directors, officers  
26 and employees of Ampio Pharmaceuticals, Inc. and its subsidiaries... All directors,  
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officers and employees of Ampio must conduct themselves accordingly and seek to avoid even the appearance of improper behavior." The Code of Ethics itself states, in pertinent part:

## **2. Purpose**

The Code seeks to deter wrongdoing and to promote:

Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; Full, fair, accurate, timely and understandable disclosure in reports and documents that Ampio files with, or submits to, the Securities and Exchange Commission (the "SEC") and in other public communications made by Ampio;

Compliance with applicable governmental laws, rules and regulations; The prompt internal reporting to an appropriate person or persons identified in the Code of violations of the Code; and

Accountability for adherence to the Code.

## **3. Compliance with Applicable Laws, Rules and Regulations**

Obeying the law is the foundation on which Ampio's ethical standards are built. You must comply with applicable laws, rules and regulations. Although you are not expected to know the details of these laws, it is important to know enough to determine when to seek advice from supervisors or other appropriate personnel.

...

## **5. Conflicts of Interest**

A "conflict of interest" exists when a person's private interests interfere or conflict in any way with the interests of Ampio, or impair, or could be perceived to impair, a person's business judgment. Decisions should be made strictly on the basis of Ampio's best interests, without regard to personal concerns. You should avoid situations that present potential conflicts of interest, either real or perceived, and should not engage in activities that would make it difficult or appear to make it difficult for you to perform your work objectively and effectively. Examples of when a conflict of interest or potential conflict of interest may arise include, but are not limited to:

1 When a director, officer or employee takes actions or has interests that may  
2 make it difficult to perform his or her work objectively and effectively.

3 When a director, officer or employee, or a member of his or her family,  
4 receives improper personal benefits as a result of his or her position with  
5 Ampio.

6 When an employee works simultaneously for a competitor or, except on our  
7 behalf, a customer or supplier. You are not allowed to work for a competitor  
8 in any capacity.

9 When a director, officer or employee serves as a member of the board of  
10 directors or advisory board of any company that competes with Ampio.

11 When a director, officer or employee invests in a customer, supplier,  
12 developer or competitor of Ampio. In deciding whether to make such an  
13 investment, you should consider the size and nature of the investment, your  
14 ability to influence decisions of Ampio or of the other company, your access  
15 to confidential information of Ampio or of the other company, and the nature  
16 of the relationship between Ampio and the other company.

17 When a director, officer or employee conducts Ampio business with a  
18 relative or significant other, or with a business with which a relative or  
19 significant other is associated in any significant role. Relatives include  
20 spouse, sister, brother, daughter, son, mother, father, grandparents, aunts,  
21 uncles, nieces, nephews, cousins, step relationships and in-laws. Significant  
22 others include persons living in a spousal or familial fashion (including same  
23 sex) with an employee, officer or director.

24 Conflicts of interest should be avoided and in all cases must promptly be  
25 disclosed fully to the Chief Executive Officer or the Chair of the Nominating  
26 and Governance Committee. In the case of any director, the Chief Executive  
27 Officer or any other executive officer, disclosure must be made to the  
28 Chairman of the Nominating and Governance Committee. Following such  
disclosure, the matter shall be considered by the full Board in order to  
determine what, if any, corrective action is required. In the case of any other  
employee, disclosure must be made to the Chief Executive Officer or the  
Outside Counsel. Following such disclosure, the matter shall be considered  
by the Chief Executive Officer or shall be considered pursuant to guidelines  
approved by the Chief Executive Officer in order to determine what, if any,  
corrective action is required. Conflicts of interest may not always be clear-

cut, so if you have a question, you should consult with higher levels of management or Ampio's Chief Executive Officer or Outside Counsel. If you become aware of a conflict or potential conflict, you should bring it to the attention of your supervisor or other appropriate personnel or consult the procedures described in Section 24 of this Code.

## **6. Public Disclosure of Information**

The federal securities laws require Ampio to disclose certain information in various reports that the Company must file with or submit to the SEC. In addition, from time to time, Ampio makes other public communications, such as issuing press releases.

Ampio expects all directors, officers and employees who are involved in the preparation of SEC reports or other public documents to ensure that the information disclosed in those documents is complete, fair, accurate, timely and understandable.

To the extent that you reasonably believe that questionable accounting or auditing conduct or practices have occurred or are occurring, you should report those concerns to the Chair of Ampio's Audit Committee.

....

## **14. Regulatory Requirements**

Ampio follows all applicable laws governing the manufacturing and distribution of drugs, devices or biological products. In particular, we observe all requirements of the U.S. Food and Drug Administration (the "FDA"), and we expect every employee to do likewise at all times. These requirements affect employees who work inside and outside the U.S. alike, as many FDA requirements apply outside of national boundaries. While there are many FDA regulations to consider, regulation of advertising and promotion directly affects our everyday communications. Therefore, all employees are obligated to understand the basic rules with respect to labeling, promotion, off-label use, pharmaceutical samples, and adverse event reporting. As a pharmaceutical company, Ampio is also subject to many healthcare rules and regulations designed to protect the public. As a Ampio employee, you must comply with the laws relating to the conduct of business in the pharmaceutical industry that address:

- fraud and abuse in federal healthcare programs (Medicare and Medicaid);
- improper influence of financial incentives on medical judgment;

- the Pharmaceutical Research and Manufacturers of America voluntary Code on Interactions with Healthcare Professionals ("PhRMA Code"); and
- protect patients and improve the quality of health care services.

....

## **16. Record-Keeping**

Ampio requires honest and accurate recording and reporting of information in order to make responsible business decisions and to comply with the law. For example, employees who must report their hours worked should only report the true and actual number of hours worked (whether for purposes of individual pay or for purposes of reporting such information to customers). Ampio also requires each director and employee to disclose any transaction or arrangement among such individual or any family member or affiliated entity of such individual, on the one hand, and any other director, employee or any family member or affiliated entity of such other individual, on the other hand, that in any way relates to or arises out of such individual's professional or working relationship with Ampio.

Many employees regularly use business expense accounts, which must be documented and recorded accurately in accordance with the Company's policies. If you are not sure whether you may seek reimbursement for a certain expense, ask your supervisor or the Chief Financial Officer.

All of Ampio's books, records, accounts and financial statements must be maintained in reasonable detail, must appropriately reflect Ampio's transactions and must conform both to applicable legal requirements and to Ampio's system of internal controls. Unrecorded or "off the books" funds or assets should not be maintained unless expressly permitted by applicable law or regulation and the Chief Financial Officer is informed by you in writing of the maintenance of such funds or assets.

Business records and communications (including internal or external e-mails) very often become public, and you should avoid exaggeration, derogatory remarks, guesswork or inappropriate characterizations of people and companies that can be misunderstood or misconstrued. This policy applies equally to e-mail, internal memos and formal reports. You should always remember that writings or images on your computer screen, screen savers, and pictures or videos you retain or view on your computer screen must

1 comply with the Company's policies including, without limitation,  
2 harassment and discrimination. Records should always be retained or  
3 destroyed according to Ampio's record retention policies. In accordance with  
4 those policies, in the event of litigation or governmental investigation, you  
5 must not delete or alter any e-mail that is directly or indirectly related to the  
6 subject of the litigation or investigation, or otherwise take any action that  
7 could be construed as an effort to obstruct the litigation or investigation. A  
8 director or employee who is found to have violated this policy could be  
9 subject to criminal penalties, among other things.

#### 10 **17. Document Retention**

11 Ampio has records retention and disposal procedures to ensure that Company  
12 records are maintained, stored, and, when appropriate, destroyed in  
13 accordance with Ampio needs and in compliance with applicable legal,  
14 regulatory, environmental, tax, employment and trade requirements. You are  
15 expected to be familiar with the specific requirements applicable to your  
16 position. Regular document destruction must stop immediately if you are  
17 aware of a legal request for such documents or if the Legal Department has  
18 issued a document hold notice. If an employee is unsure whether a document  
19 has been placed under a legal hold, such employee should preserve and  
20 protect that document while the Legal Department is contacted.

21 34. At all times relevant hereto, the Individual Defendants were the agents  
22 of each other and were at all times acting within the course and scope of such  
23 agency.

#### 24 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

25 35. The Individual Defendants engaged in a conspiracy, common  
26 enterprise, and/or common course of conduct. The Individual Defendants caused  
27 the Company to conceal the true facts as alleged herein.

28 36. The purpose and effect of the conspiracy, common enterprise, and/or  
common course of conduct was, among other things, to: (i) facilitate and disguise  
the Individual Defendants' violations of law, including breaches of fiduciary duty



1 and unjust enrichment; (ii) to conceal adverse information concerning the  
2 Company's operations, financial condition, future business prospects, internal  
3 controls, and bonuses provided to employees; and (iii) to artificially inflate the  
4 Company's stock price.  
5

6 37. The Individual Defendants accomplished their conspiracy, common  
7 enterprise, and/or common course of conduct by causing the Company to  
8 purposefully, recklessly, or negligently to conceal material facts, misrepresent its  
9 financial results, fail to correct such misrepresentations, and violate applicable laws.  
10 Because the actions described herein occurred under the authority of the Board,  
11 each of the Individual Defendants who are directors of Ampio was a direct,  
12 necessary, and substantial participant in the conspiracy, common enterprise, and/or  
13 common course of conduct complained of herein.  
14  
15  
16

17 38. Each of the Individual Defendants aided and abetted and rendered  
18 substantial assistance in the wrongs complained of herein. In taking such actions to  
19 substantially assist the commission of the wrongdoing complained of herein, each  
20 of the Individual Defendants acted with knowledge of the primary wrongdoing,  
21 substantially assisted the accomplishment of that wrongdoing, and was aware of his  
22 overall contribution to, and furtherance of, the wrongdoing.  
23  
24

25 39. At all times relevant hereto, each of the Individual Defendants was the  
26 agent of each of the other Individual Defendants and of Ampio, and was at all times  
27 acting within the course and scope of such agency.  
28



**DEFENDANTS' MISCONDUCT**

40. On January 13, 2014, the Company issued a press release announcing that the STEP Study for the treatment for OAK had received IRB approval and FDA IND clearance and that patients enrollment and treatments had commenced.

41. On February 14, 2014, the Company filed a Form 10-K for the fiscal year ended December 31, 2013 (the "2013 10-K") with the SEC, which was signed by Defendants Macaluso and McGregor. The 2013 10-K states in part:

In January 2014, Ampio entered into an agreement with a clinical research organization to conduct its 500 patent Phase III pivotal trial of Ampion for the treatment of osteoarthritis of the knee. The contract fees total \$4.7 million and extend over approximately ten months.

42. On February 18, 2014, the Company issued a press release announcing it has completed enrollment and dosing of 500 patient in the pivotal trial of Ampion for the treatment of OAK.

43. The statements referenced in paragraphs 40-42 above were materially false and/or misleading and/or failed to disclose that: (1) the clinical research organization conducting the STEP Study lacked autonomy; and (2) the trial drug supply for the STEP Study was shipped to clinical sites at lower temperatures than were permitted by the drug's specifications.

44. The Company failed to correct the false and/or misleading statements and/or omissions of material fact referenced in paragraphs 40-42.

1           45. On August 21, 2014, the Company issued a press release announcing a  
2 delay in the data analysis of the STEP Study due to the discovery by the  
3 independent Clinical Research Organization (CRO) that the study drug, Ampion,  
4 and the placebo were, during shipment to the clinical sites, exposed to lower  
5 temperatures than permitted by the drug's specifications. The press releases stated  
6 in pertinent part:  
7  
8

9           **Ampio reports that due to temperature deviations below product**  
10          **specifications during shipments to the Ampion™ STEP Study clinical**  
11          **sites, release of data will be delayed**

12          ENGLEWOOD, CO., August 21, 2014 /PRNewswire/ — Ampio  
13          Pharmaceuticals, Inc. (NYSE MKT: AMPE) today announced a delay in the  
14          data analysis of the STEP Study due to the discovery by the independent  
15          Clinical Research Organization (CRO) that the study drug (both Ampion™  
16          and the placebo) were, during shipment to the clinical sites, exposed to lower  
17          temperatures than permitted by the drug specifications

18          Michael Macaluso, Ampio's CEO, explained "Pivotal clinical trial drug  
19          specifications dictate precise temperature and handling conditions for all  
20          study drug product in order to assure that the conclusions about the safety  
21          and effectiveness of the tested drugs will be accurate and repeatable during  
22          routine clinical use. During the review of all documentation following the  
23          unblinding of the Study, our CRO determined that there were multiple  
24          instances where the in-package temperature monitor fell significantly below  
25          the 15o C minimum required.

26          Although our entire trial drug supply was housed, packaged, and shipped in  
27          early January by a specialized drug shipment vendor contractually obligated  
28          to maintain pre-determined temperature requirements under all conditions,  
29          our CRO discovered much of the drug product received at the clinical sites  
30          had been below the temperature requirement and may have been frozen for  
31          some period of time. The drug temperature specifications were set because  
32          Ampion™ may lose potency if it is exposed to temperatures approaching  
33          freezing. We have contacted the FDA who has agreed to analyze the STEP  
34          trial as supportive data for our BLA."

1  
2 Mr. Macaluso concluded, "Although we are frustrated by these shipping and  
3 receiving deviations of the Step Study protocols, the company is pursuing  
4 alternative solutions to meeting the requirements for filing a Biologic License  
5 Application (BLA) for Ampion<sup>TM</sup> on schedule. We are consulting with our  
6 regulatory advisors about substituting the data from our Multiple Injection  
7 (MI) Study that is currently underway. The compilation of data from the  
8 "SPRING" single injection study and the MI study may provide a more  
9 comprehensive and clinically meaningful analysis by the FDA reviewers. If  
10 the MI study confirms the 85+% reduction in pain reported by the initial  
11 patients, it is unlikely that physicians will choose to treat the severe chronic  
12 pain experienced by Kellgren Lawrence Grades 3 and 4 OA patients with a  
13 single injection. The "Indications for Use" and improved efficacy over  
14 placebo, provided by multiple injections, should be of greatest interest to the  
15 FDA and the physician community, who are trying to improve the quality of  
16 life of their patients."

17  
18 46. On August 21, 2014, an article was published on *The Street* by Adam  
19 Feuerstein titled "Ampio: The Freezer Killed My Osteoarthritis Drug" that stated  
20 that it is incredible for the trial drug to have been shipped at the wrong temperature.  
21 The article stated Defendants made this statement after the study was done and after  
22 they were aware of its results as an excuse not to share the results with the investing  
23 public.

24  
25 47. Either the Individual Defendants knew about shipping the drug at the  
26 wrong temperature many months before they disclosed it, or they made that up as  
27 an excuse to hide from the investing public the poor results of the study.

28  
48. Furthermore, the statements referenced in paragraph 45 above were  
materially false and/or misleading and/or failed to disclose that the clinical research  
organization conducting the STEP Study lacked independence.

1           49. The Company failed to correct the false and/or misleading statements  
2 and/or omissions of material fact referenced in paragraph 48.

3  
4           50. On August 22, 2014, the blog *BuyersStrike* issued a report on Ampio  
5 titled "Every Picture Tells a Story -- AMPE, the (other) Dream Team & Raghuram  
6 Selvaraju," which asserts a number of red flags with the STEP Study, including  
7 that: (1) it was conducted at only one site in Anaheim, California with only one  
8 doctor supervising it, which would have been appropriate for the enrollment of only  
9 a few patients, yet it enrolled 500 patients; (2) the clinical research organization that  
10 conducted the trial -- Dream Team Clinical Research -- has little clinical trial  
11 management experience and is located in strip mall by a McDonalds in Anaheim,  
12 California; and (3) Dream Team Clinical Research lacks independence as its office  
13 is located next door to Dr. Quang D. Vo, the principal investigator of the trial and  
14 its door directs all visitors to Dr. Vo's office in the event it is locked.

15  
16           51. Significantly, Defendant Macaluso has a history of engaging in what is  
17 alleged to be securities fraud. Macaluso was the CEO of Isolagen, Inc., another  
18 biotechnology company, from 2001 to September 2004, a director until April 2005,  
19 and a controlling shareholder, owning more than 10% of Isolagen's stock.  
20 According to a class action lawsuit in the United States District Court for the  
21 Eastern District of Pennsylvania, Macaluso sold Isolagen stock on inside  
22 information after he was alleged to have made false and misleading statements of  
23 material fact but before the truth was disclosed, garnering proceeds of over \$2.5  
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28

1 million. The motion to dismiss the securities fraud class action complaint made by  
2 Macaluso and other Isolagen management was denied by the Court. The securities  
3 fraud action was settled for about \$4.5 million. Isolagen went bankrupt.

#### 4 5 6 **DAMAGES TO AMPIO**

7  
8 52. As a direct and proximate result of the Individual Defendants' conduct,  
9 Ampio has expended and will continue to expend significant sums of money.

10 53. Such expenditures include, but are not limited to, legal fees associated  
11 with the class action lawsuits filed against the Company and certain Individual  
12 Defendants for violations of the federal securities laws, and amounts paid to outside  
13 lawyers, accountants, and investigators in connection with any internal  
14 investigations.  
15

16  
17 54. Such expenditures include the cost of conducting the STEP Study, as  
18 Defendants admitted that the results of the STEP Study were not accurate due to  
19 conducting the STEP Study in a faulty manner.  
20

21 55. Such costs include, but are not limited to, compensation and benefits  
22 paid to the Individual Defendants who breached their fiduciary duties to the  
23 Company.  
24

25 56. As a direct and proximate result of the Individual Defendants' conduct,  
26 Ampio has suffered and will continue to suffer a loss of reputation and goodwill,  
27 and a "liar's discount" that will plague the Company's stock in the future due to the  
28

1 misrepresentations made by the Individual Defendants and caused to be made by  
2 the Company by the Individual Defendants.

3  
4 **DERIVATIVE ALLEGATIONS**

5 57. Plaintiff brings this action derivatively and for the benefit of Ampio to  
6 redress injuries suffered, and to be suffered, as a result of the Individual  
7 Defendants' breaches of their fiduciary duties as directors and/or officers of Ampio,  
8 gross mismanagement, abuse of control, and unjust enrichment, as well as the  
9 aiding and abetting thereof.

10  
11  
12 58. Ampio is named solely as a nominal party in this action. This is not a  
13 collusive action to confer jurisdiction on this Court that it would not otherwise  
14 have.

15  
16 59. Plaintiff is, and at all relevant times has been, an Ampio shareholder.  
17 Plaintiff will adequately and fairly represent the interests of Ampio in enforcing and  
18 prosecuting its rights, and, to that end, has retained competent counsel, experienced  
19 in derivative litigation, to enforce and prosecute this action.

20  
21 **DEMAND FUTILITY ALLEGATIONS**

22 60. Plaintiff incorporates by reference and re-alleges each and every  
23 allegation stated above as if fully set forth herein.

24  
25 61. A pre-suit demand on the Board of Ampio is futile and, therefore,  
26 excused. At the time of filing of this action, the Board consisted of the following  
27 five Individual Defendants: Macaluso, Bar-Or, Coelho, Giles, and Stevens  
28

1 (collectively, the "Directors"). Plaintiff needs only to allege demand futility as to  
2 three of the five directors that were on the Board at the time this action was  
3 commenced.  
4

5 62. Defendant Macaluso acted as the Company's CEO and Chairman, and  
6 thus, is a non-independent Director. Macaluso received from the Company \$1.55  
7 million in compensation in 2014, including stock options valued at \$1.10 million,  
8 and \$376,000 thousand in 2013. Macaluso beneficially owns 4.8%, or 2,549,000  
9 shares, of Company common stock. As the leader of the Company who was the  
10 most responsible for the Company's fraud, and as the maker of the false and  
11 misleading statements of material fact as alleged herein, Macaluso breached his  
12 fiduciary duties. As the most plausible inference is that the fraud alleged herein  
13 was widespread and systemic at the Company, Macaluso knowingly engaged in,  
14 facilitated, concealed, and failed to disclose the fraud, or recklessly turned a blind  
15 eye to it. Additionally, Macaluso is a defendant in the federal securities fraud class  
16 action lawsuits. Thus, Macaluso faces a substantial likelihood of liability, and  
17 demand upon him is futile and, therefore, excused.  
18  
19

20 63. Defendant Bar-Or is the Company's Chief Scientific Officer and a  
21 Company Director, and thus, is a non-independent Director. In 2014 Bar-Or  
22 received from the Company \$1.84 million in compensation, including stock options  
23 valued at \$1.54 million. In 2013 Bar-Or received from the Company \$924 thousand  
24 in compensation, including stock options valued at \$469 thousand. Bar-Or  
25  
26  
27  
28

1 beneficially owns 1.9%, or 1,033,333 shares, of Company common stock. As the  
2 most plausible inference is that the fraud alleged herein was widespread and  
3 systemic at the Company, Bar-Or knowingly engaged in, facilitated, concealed, and  
4 failed to disclose the fraud, or recklessly turned a blind eye to it. Thus, as a non-  
5 independent director, and as an officer who was directly responsible for the  
6 Company's fraud, he faces a substantial likelihood of liability, demand upon him is  
7 futile and, therefore, excused.

10 64. Defendant Giles is a Company Director since August 2010. Giles is a  
11 member of the Audit Committee, the Nomination and Governance Committee, and  
12 the Compensation Committee. Giles received from the Company \$400 thousand in  
13 compensation in 2014, including stock options valued at \$306 thousand. Giles  
14 received from the Company \$294 thousand in compensation in 2013, including  
15 stock options valued at \$210 thousand. Giles beneficially owns 1.7%, or 880,481  
16 shares, of Company common stock. In August 2010 Giles loaned the Company  
17 \$100 thousand. As the most plausible inference is that the fraud alleged herein was  
18 widespread and systemic at the Company, Giles knowingly engaged in, facilitated,  
19 concealed, and failed to disclose the fraud, or recklessly turned a blind eye to it.  
20 Due to Giles' substantial equity interest in the Company, the substantial income he  
21 received from the Company, and the related-party transaction that he engaged in  
22 with the Company, Giles is beholden to Macaluso and other Officer Defendants and  
23 has a vested interest in causing the Company stock price to be as high as possible.



1 Thus, as Giles is not a disinterested or independent director, and as he faces a  
2 substantial likelihood of liability, demand upon him is futile and, therefore,  
3  
4 excused.

5 65. Defendant Coelho is a Company Director since April 2010. Coelho is  
6 a member of the Audit Committee, the Nomination and Governance Committee,  
7 and the Compensation Committee. He received from the Company \$241 thousand  
8 in compensation in 2014, including stock options valued at \$133 thousand. Coelho  
9 received from the Company \$93 thousand in compensation in 2013. Coelho  
10 beneficially owns 1.1%, or 573,414 shares, of Company common stock. As the  
11 most plausible inference is that the fraud alleged herein was widespread and  
12 systemic at the Company, Coelho knowingly engaged in, facilitated, concealed, and  
13 failed to disclose the fraud, or recklessly turned a blind eye to it. Due to his  
14 substantial equity interest in the Company and his substantial income received from  
15 the Company, Coelho is beholden to Macaluso and other Officer Defendants and  
16 has a vested interest in causing the Company stock price to be as high as possible.  
17 Thus, as Coelho is not a disinterested or independent director, and as he faces a  
18 substantial likelihood of liability, demand upon him is futile and, therefore,  
19  
20 excused.

21 66. Defendant Stevens is a Company Director since June 2011. Stevens is  
22 a member of the Audit Committee and the Compensation Committee. He received  
23 from the Company \$71 thousand in compensation in 2014. Stevens received from  
24  
25  
26  
27  
28

1 the Company \$61 thousand in compensation in 2013. Stevens beneficially owns  
2 0.4%, or 222,922 shares, of Company common stock. As the most plausible  
3 inference is that the fraud alleged herein was widespread and systemic at the  
4 Company, Stevens knowingly engaged in, facilitated, concealed, and failed to  
5 disclose the fraud, or recklessly turned a blind eye to it. Due to his substantial  
6 equity interest in the Company, Stevens has a vested interest in causing the  
7 Company stock price to be as high as possible. Thus, as Stevens is not a  
8 disinterested or independent director, and as he faces a substantial likelihood of  
9 liability, demand upon him is futile and, therefore, excused.  
10  
11  
12

13 67. Demand is excused as to all of the Directors because each one of them  
14 faces, individually and collectively, a substantial likelihood of liability as a result of  
15 their scheme, which renders them unable to impartially investigate the charges and  
16 decide whether to pursue action against themselves and the other perpetrators of the  
17 scheme.  
18  
19

20 68. The Directors, as members of the Board, were and are subject to the  
21 Code of Ethics. The Code of Ethics is applicable to all employees, including the  
22 Company's officers and directors. The Code of Ethics goes well beyond the basic  
23 fiduciary duties required by applicable laws, rules, and regulations. The Code of  
24 Ethics required the Directors to also adhere to Ampio's standards of business  
25 conduct. The Directors did not comply with the requirements of the Code of  
26 Ethics. The Directors violated the Code of Ethics by making and/or facilitating the  
27  
28

1 false misrepresentations set forth, by failing to correct those misrepresentations, and  
2 by engaging in misconduct. Because these Directors violated the Code of Ethics,  
3 they face a substantial likelihood of liability for breaching their fiduciary duties,  
4 and therefore demand upon them is futile.

6 69. Furthermore, demand in this case is excused because the Directors,  
7 who are named as defendants in this action, control the Company and are beholden  
8 to each other. The Board is especially beholden to Defendant Macaluso, who made  
9 and/or was responsible for causing the Company's misconduct and for making the  
10 false and misleading statements of material fact alleged herein and for failing to  
11 correct those false and misleading statements.

14 70. Members of the Board have longstanding business and personal  
15 relationships with each other and the Individual Defendants that preclude them  
16 from acting independently and in the best interests of the Company and the  
17 shareholders. These conflicts of interest precluded the Board from adequately  
18 monitoring the Company's operations and calling into question the Individual  
19 Defendants' conduct. Thus, any demand on these Directors would be futile.

22 71. Ampio has been and will continue to be exposed to significant losses  
23 due to the wrongdoing complained of herein, yet the Directors have not filed any  
24 lawsuits against themselves or others who were responsible for that wrongful  
25 conduct to attempt to recover for Ampio any part of the damages Ampio suffered  
26  
27  
28

1 and will continue to suffer thereby. Thus, any demand on these Directors would be  
2 futile.

3  
4 72. The Individual Defendants' conduct described herein and summarized  
5 above could not have been the product of legitimate business judgments as it was  
6 based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of  
7 the Directors can claim exculpation from their violations of duty pursuant to the  
8 Company's charter (to the extent such a provision exists). As a majority of the  
9 Directors face a substantial likelihood of liability, they are self-interested in the  
10 transactions challenged herein and cannot be presumed to be capable of exercising  
11 independent and disinterested judgment about whether to pursue this action on  
12 behalf of the shareholders of the Company. Accordingly, demand is excused as  
13 being futile.  
14  
15  
16

17 73. The acts complained of herein constitute violations of fiduciary duties  
18 owed by Ampio's officers and directors and these acts are incapable of ratification.  
19

20 74. The Directors may also be protected against personal liability for their  
21 acts of mismanagement and breaches of fiduciary duty alleged herein by directors'  
22 and officers' liability insurance if they caused the Company to purchase it for their  
23 protection with corporate funds, i.e., monies belonging to the stockholders of  
24 Ampio. If there is a directors' and officers' liability insurance policy covering the  
25 Directors, it may contain provisions that eliminate coverage for any action brought  
26 directly by the Company against the Directors, known as, *inter alia*, the "insured-  
27  
28

1 versus-insured exclusion." As a result, if the Directors were to sue themselves or  
2 certain of the officers of Ampio, there would be no directors' and officers' insurance  
3 protection. Accordingly, the Directors cannot be expected to bring such a suit. On  
4 the other hand, if the suit is brought derivatively, as this action is brought, such  
5 insurance coverage, if such an insurance policy exists, will provide a basis for the  
6 Company to effectuate a recovery. Thus, demand on the Directors is futile and,  
7 therefore, excused.  
8

9  
10 75. If there is no directors' and officers' liability insurance, then the  
11 Directors will not cause Ampio to sue the Individual Defendants named herein,  
12 since, if they did, they would face a large uninsured individual liability.  
13 Accordingly, demand is futile in that event, as well.  
14

15  
16 76. Thus, for the reasons set forth above, all of the Directors, and, if not all  
17 of them, certainly a majority of the Directors, cannot consider a demand with  
18 disinterestedness and independence. Consequently, a demand upon the Board is  
19 excused as futile.  
20

21 77. Overall, the Company will most likely expend millions of dollars in  
22 internal investigations and defending the securities fraud class actions. It may be  
23 liable for millions of dollars in damages if it loses or settles the related securities  
24 fraud class actions. Moreover, the Company's reputation has been severely  
25 damaged. The Company has also wasted a substantial amount of money in  
26 compensating the Individual Defendants as directors and officers. Its market  
27  
28

capitalization has been severely diminished and its prospect of raising equity in the future is questionable. All of this substantial damage stems proximately from the Individual Defendants' conscious and willful breaches of their fiduciary duties, abuse of control, and other malfeasance.

### **FIRST CLAIM**

#### **Against Individual Defendants for Breach of Fiduciary Duties**

78. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

79. Each Individual Defendant owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Ampio's business and affairs.

80. Each of the Individual Defendants violated and breached his fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

81. The Individual Defendants' conduct set forth herein was due to their intentional, reckless, or negligent breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants intentionally, recklessly, or negligently breached or disregarded their fiduciary duties to protect the rights and interests of Ampio.

82. In breach of their fiduciary duties owed to Ampio, the Individual willfully engaged in misconduct and participated in misrepresentation of the Company's business operations and prospects and failed to correct the Company's

1 public statements, rendering them personally liable to the Company for breaching  
2 their fiduciary duties.

3  
4 83. The Individual Defendants had actual or constructive knowledge that  
5 they had engaged in misconduct and caused the Company to improperly  
6 misrepresent its business operations and prospects and they failed to correct the  
7 Company's public statements. Defendants had actual knowledge of the  
8 misrepresentations and omissions of material facts set forth herein, or acted with  
9 reckless disregard for the truth, in that they failed to ascertain and to disclose such  
10 facts, even though such facts were available to them. Such material  
11 misrepresentations and omissions were made, and were subsequently not corrected,  
12 knowingly or recklessly and for the purpose and effect of artificially inflating the  
13 price of Ampio's securities.

14  
15  
16  
17 84. These actions were not a good-faith exercise of prudent business  
18 judgment to protect and promote the Company's corporate interests.

19  
20 85. Individual Defendants had actual knowledge of the misrepresentations  
21 and omissions of material facts set forth herein, or acted with reckless disregard for  
22 the truth in that they failed to ascertain and to disclose such facts, even though such  
23 facts were available to them, and failed to correct such misrepresentations and  
24 omissions. Such material misrepresentations and/or omissions were caused to be  
25 made knowingly or recklessly. Such failure to correct the material  
26  
27  
28

1 misrepresentations and/or omissions was caused to be done knowingly or  
2 recklessly.

3  
4 86. As a direct and proximate result of the Individual Defendants' breaches  
5 of their fiduciary obligations, Ampio has sustained and continues to sustain  
6 significant damages. As a result of the misconduct alleged herein, Individual  
7 Defendants are liable to the Company.  
8

## 9 **SECOND CLAIM**

### 10 **Against Individual Defendants for Abuse of Control**

11  
12 87. Plaintiff incorporates by reference and re-alleges each and every  
13 allegation set forth above, as though fully set forth herein.

14  
15 88. The Individual Defendants' misconduct alleged herein constituted an  
16 abuse of their ability to control and influence Ampio, for which they are legally  
17 responsible.

18  
19 89. As a direct and proximate result of the Individual Defendants' abuse of  
20 control, Ampio has sustained significant damages. As a direct and proximate result  
21 of the Individual Defendants' breaches of their fiduciary obligations of candor, good  
22 faith, and loyalty, Ampio has sustained and continues to sustain significant  
23 damages. As a result of the misconduct alleged herein, the Individual Defendants  
24 are liable to the Company.  
25

## 26 **THIRD CLAIM**

### 27 **Against Individual Defendants for Gross Mismanagement**



1           90. Plaintiff incorporates by reference and re-alleges each and every  
2 allegation set forth above, as though fully set forth herein.

3  
4           91. By their actions alleged herein, the Individual Defendants, either  
5 directly or through aiding and abetting, abandoned and abdicated their  
6 responsibilities and fiduciary duties with regard to prudently managing the assets  
7 and business of Ampio in a manner consistent with the operations of a publicly-  
8 held corporation.

9  
10           92. As a direct and proximate result of the Individual Defendants' gross  
11 mismanagement and breaches of duty alleged herein, Ampio has sustained and will  
12 continue to sustain significant damages.

13  
14           93. As a result of the misconduct and breaches of duty alleged herein, the  
15 Individual Defendants are liable to the Company.

16  
17           94. Plaintiff, on behalf of Ampio, has no adequate remedy at law.

18  
19                           **FOURTH CLAIM**

20                           **Against Individual Defendants for Unjust Enrichment**

21           95. Plaintiff incorporates by reference and re-alleges each and every  
22 allegation set forth above, as though fully set forth herein.

23  
24           96. By their wrongful acts and the omissions of material fact that they  
25 caused to be made, the Individual Defendants were unjustly enriched at the expense  
26 of, and to the detriment of, Ampio.

1           97. The Individual Defendants either received bonuses, stock options, or  
2 similar compensation from Ampio that was tied to the financial performance or  
3 artificially inflated valuation of Ampio or received compensation that was unjust in  
4 light of the Individual Defendants' bad faith conduct.

5  
6           98. Plaintiff, as a shareholder and a representative of Ampio, seeks  
7 restitution from the Individual Defendants and seeks an order from this Court  
8 disgorging all profits, benefits, and other compensation, including any  
9 performance-based or valuation-based compensation, obtained by the Individual  
10 Defendants due to their wrongful conduct and breach of their fiduciary duties.  
11

12  
13                                   **PRAYER FOR RELIEF**

14           FOR THESE REASONS, Plaintiff demands judgment in the Company's  
15 favor against all Individual Defendants as follows:  
16

17                   (a) Declaring that Plaintiff may maintain this action on behalf of  
18 Ampio, and that Plaintiff is an adequate representative of the Company;  
19

20                   (b) Declaring that the Individual Defendants have breached and/or  
21 aided and abetted the breach of their fiduciary duties to Ampio;  
22

23                   (c) Determining and awarding to Ampio the damages sustained by  
24 it as a result of the violations set forth above from each of the Individual  
25 Defendants, jointly and severally, together with pre-judgment and post-judgment  
26 interest thereon;  
27

28                   (d) Directing Ampio and the Individual Defendants to take all

1 necessary actions to reform and improve its corporate governance and internal  
2 procedures to comply with applicable laws and to protect Ampio and its  
3 shareholders from a repeat of the damaging events described herein, including, but  
4 not limited to, putting forward for shareholder vote the following resolutions for  
5 amendments to the Company's Bylaws or Articles of Incorporation and the  
6 following actions as may be necessary to ensure proper corporate governance  
7 policies:  
8

9  
10 1. a proposal to strengthen the Board's supervision of operations  
11 and develop and implement procedures for greater shareholder input into  
12 the policies and guidelines of the Board;  
13

14 2. a provision to permit the shareholders of Ampio to nominate at  
15 least three candidates for election to the Board; and  
16

17 3. a proposal to ensure the establishment of effective oversight of  
18 compliance with applicable laws, rules, and regulations.  
19

20 (e) Awarding Ampio restitution from Individual Defendants, and  
21 each of them;  
22

23 (f) Awarding Plaintiff the costs and disbursements of this action,  
24 including reasonable attorneys' and experts' fees, costs, and expenses; and  
25

26 (g) Granting such other and further relief as the Court may deem  
27 just and proper.  
28

**JURY TRIAL DEMANDED**

1                   Plaintiff hereby demands a trial by jury.

2           Dated: August 3, 2015

Respectfully submitted,

3                   Timothy W. Brown  
4                   THE BROWN LAW FIRM, P.C.

5                   *-and-*

6                   Robert C. Moest  
7                   LAW OFFICES OF ROBERT C. MOEST

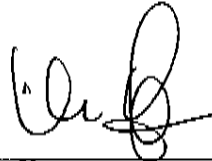
8                   By: \_\_\_\_\_/s Robert C. Moest\_\_\_\_\_

9                   *Counsel for Plaintiff*

VERIFICATION

I, Michele Oglina, am the plaintiff in the within action and am a citizen of Italy. I have read the foregoing complaint and know the contents thereof. The allegations of the complaint are true of my personal knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of August 2015.

A handwritten signature in black ink, appearing to be 'M. Oglina', written over a horizontal line.

Michele Oglina